

EXPLANATION**Authorization to enter into a Housing Agreement
(Market Rental and Moderate Income Rental Housing)
Re: 2133 Nanton Avenue and 4189 Yew Street**

After the Public Hearing on July 24, 2018, Council approved in principle a Housing Agreement (Market Rental and Moderate Income Rental Housing) to be entered into by the City and the land owner, on terms satisfactory to the General Manager of Arts, Culture and Community Services and the Director of Legal Services, prior to enactment of the CD-1 By-law. The Housing Agreement was accepted and executed by the applicant, and the City now seeks enactment of a By-law as contemplated by section 565.2 of the Vancouver Charter, to authorize such Housing Agreement and to authorize the City to enter into the Housing Agreement with the land owner.

Director of Legal Services
January 22, 2020



2133 Nanton Avenue and 4189 Yew Street

BY-LAW NO.

**A By-law to enact a Housing Agreement
for 2133 Nanton Avenue and 4189 Yew Street**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council authorizes the City to enter into a Housing Agreement with the owner of certain lands described as:

029-960-835

Lot 1 District Lot 526 Group 1 New Westminster District
Plan EPP59809

in substantially the form and substance of the Housing Agreement attached to this By-law, and also authorizes the Director of Legal Services to execute the agreement on behalf of the City, and to deliver it to the owner on such terms and conditions as the Director of Legal Services deems fit.

2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this day of , 2020

Mayor

City Clerk

**LAND TITLE ACT
FORM C (Section 233) CHARGE
GENERAL INSTRUMENT - PART 1 Province of British Columbia**

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.4(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.



1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)
[Applicant's lawyer to insert]

Housing Agreement - MIRHPP

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]
**029-960-835 LOT 1 DISTRICT LOT 526 GROUP 1 NEW WESTMINSTER DISTRICT PLAN
EPP59809**

STC? YES

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION
SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)
(a) Filed Standard Charge Terms D.F. No. (b) Express Charge Terms Annexed as Part 2
A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):
**ARBUTUS VILLAGE HOLDINGS LTD. (INC. NO. BC0351064)
THE BANK OF NOVA SCOTIA (AS TO PRIORITY)**

6. TRANSFEREE(S): (including postal address(es) and postal code(s))
CITY OF VANCOUVER

**453 WEST 12TH AVENUE
VANCOUVER BRITISH COLUMBIA
V57 1V4 CANADA**

7. ADDITIONAL OR MODIFIED TERMS:
N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s),

**LAUREN MUIRHEAD
Barrister & Solicitor
McCarthy Tétrault LLP
SUITE 2400 - 745 THURLOW STREET
VANCOUVER, B.C. V6E 0C5
DIRECT 604-643-7952**

Execution Date		
Y	M	D
19	11	27

Transferor(s) Signature(s)

ARBUTUS VILLAGE HOLDINGS LTD., by its authorized signatory (ies):

Print Name: **Amin Lajji**

Print Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

Officer Signature(s)

[Handwritten Signature]

Gowling WLG (Canada) LLP
1 First Canadian Place
100 King Street West
Suite 1600
Toronto, ON
M5X 1G5

Execution Date

Y	M	D
19	12	02

Transferor / Borrower / Party Signature(s)

THE BANK OF NOVA SCOTIA, by its
authorized signatory(ies):

[Handwritten Signature]

Print Name: Andrew Black
Director

[Handwritten Signature]

Print Name: Kristen Canario
Associate

CITY OF VANCOUVER, by its
authorized signatory:

Print Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM E
SCHEDULE

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Entire Instrument

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting the above Covenant priority over Mortgage CA5700843 and Assignment of Rents CA5700844

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
--------------------	------------	------------------------

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
--------------------	------------	------------------------

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
--------------------	------------	------------------------

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
--------------------	------------	------------------------

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND BUILDING USE COVENANT
FOR SECURED MARKET RENTAL HOUSING AND
MODERATE INCOME RENTAL HOUSING

2133 NANTON AVENUE AND 4189 YEW STREET (ARBUTUS CENTRE)

WHEREAS:

A. It is understood and agreed that this instrument and Agreement will be read as follows:

- (i) the Transferor, Arbutus Village Holdings Ltd., is called the "Owner", as more particularly defined in Section 1.1; and
- (ii) the Transferee, City of Vancouver, is called the "City" or the "City of Vancouver" when referring to the corporate entity continued under the *Vancouver Charter*, and "Vancouver" when referring to geographic location;

B. The Owner is the registered owner of the Lands;

C. The Owner made an application to amend CD-1 (642) By-Law No. 11658, as amended by By-Law no. 11749 (collectively, the "CD-1 By-law") in respect of the Lands (the "Rezoning Application"). After a public hearing to consider the Rezoning Application, the Rezoning Application was approved by the City's Council on July 24, 2018 subject to, among other things, fulfillment of the condition that prior to the enactment of the by-law to amend the CD-1 Bylaw (the "Rezoning By-law"), the Owner make arrangements to the satisfaction of the General Manager of Arts, Culture and Community Services and the Director of Legal Services to enter into a Housing Agreement by by-law enacted pursuant to Section 565.2 of the *Vancouver Charter* to secure 91 dwelling units at a square footage of not less than 9,202 sq. m (99,050 sq. ft.) gross floor space as secured market rental housing, plus related parking and other indoor and outdoor amenity space consistent with relevant Council-adopted guidelines. An additional 975 sq. m (10,500 sq. ft.) will be secured at moderate income rates as set out in the Moderate Income Rental Housing Pilot Program (collectively, the "Housing Condition"); and

D. The Owner is entering into this Agreement to satisfy the Housing Condition.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, pursuant to Section 565.2 of the *Vancouver Charter* and Section 219 of the *Land Title Act*, agree as follows, in respect of the use of the Lands and the New Building:

**ARTICLE 1
DEFINITIONS AND INTERPRETATION**

1.1 Definitions. Terms defined in this Section 1.1, unless specifically otherwise provided in this Agreement, will have the following meanings:

- (a) "Agreement" means this housing agreement and building use covenant, including the foregoing recitals and all schedules hereto;
- (b) "Building Permit" means any building permit issued by the City authorizing the building of a New Building as contemplated by the Rezoning By-law and the Development Permit;
- (c) "City" and "City of Vancouver" have the meaning ascribed to those terms in Recital A(ii);
- (d) "City Manager" means the chief administrator from time to time of the City and his/her successors in function and their respective nominees;
- (e) "City Personnel" means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (f) "Development Permit" means any development permit issued by the City authorizing the development of the Lands as contemplated by the Rezoning By-law, as the same may be amended from time to time;
- (g) "Director of Legal Services" means the chief administrator from time to time of the City's Legal Services Department and her/his successors in function and their respective nominees;
- (h) "Discharge" has the meaning ascribed to that term in Section 7.1(b);
- (i) "Discharge Date" means the date upon which the Owner files the Discharge with the Land Title Office;
- (j) "Effective Date" means the date as of which this Agreement has been executed by all parties to it;
- (k) "General Manager of Arts, Culture and Community Services" means the person appointed from time to time as the City's General Manager of Arts, Culture and Community Services and his/her successors in function and delegates and their respective nominees;
- (l) "Housing Unit" means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (m) "Income" of an Occupant means the total annual world-wide income, before income tax, from all sources of the Occupant and includes without limitation, the following income sources:

- (i) income assistance;
- (ii) employment, including regular overtime, vacation pay and gratuities;
- (iii) self-employment, including commission sales;
- (iv) seasonal employment;
- (v) Employment Insurance and WorkSafe BC insurance;
- (vi) training allowances;
- (vii) income from the Resettlement Assistance Program;
- (viii) child support, maintenance payments or support from family/friends/community;
- (ix) rental income from real estate or dividends from stocks or bonds; and
- (x) pension income including:
 - (A) old Age Security, Guaranteed Income Supplement, Allowance, and Allowance for the Survivor (formerly Spousal Allowance);
 - (B) senior's supplement;
 - (C) private pension plans including Registered Retirement Income Funds;
 - (D) Canada Pension Plan, including retirement, disability, orphans, widows, disability for child, etc.;
 - (E) War Veteran's Allowance and Disability Pension from Veteran's Affairs Canada (included for calculations with an effective date prior to January, 2013); and
 - (F) foreign pensions,

but does not include:

- (xi) earnings of dependent children aged 18 and under (regardless of student status);
- (xii) student loans, equalization payments, student grants and scholarships;
- (xiii) taxable benefits, including living out or travel allowances, medical coverage, uniform allowance, etc.;
- (xiv) Shelter Aid for Elderly Renters and Rental Assistance Program payments;

- (xv) Canada Child Tax Benefits, including the National Child Benefit Supplement, Child Disability Benefit, BC Family Bonus, and BC Earned Income Benefit;
 - (xvi) Universal Child Care Benefits;
 - (xvii) BC Childcare Subsidy;
 - (xviii) income from foster parenting;
 - (xix) Child in Home of Relative and Extended Family Program;
 - (xx) income from approved live-in care givers;
 - (xxi) GST and Income Tax rebates; and
 - (xxii) War Veteran's Allowance and Disability Pension from Veteran's Affairs Canada (excluded for calculations with an effective date in or after January, 2013);
- (n) "*Land Title Act*" means the *Land Title Act*, R.S.B.C. 1996, c. 250, and amendments thereto and re-enactments thereof;
 - (o) "Lands" means the parcel of land situate in Vancouver, British Columbia and legally described in Item 2 of the Form C - General Instrument - Part 1, and includes any parcels into which such land is consolidated or further subdivided;
 - (p) "Losses" means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, judgements, builders' liens, liabilities, indirect or consequential damages (including loss of profit and loss of use and damages arising out of delays) and expenses of every nature or kind whatsoever;
 - (q) "Moderate Income Rental Housing" means multiple Housing Units for use as Rental Housing within a building which have monthly rents that meet the requirements of Section 2.1(p) of this Agreement (as may be adjusted according to the terms of this Agreement) and which are made available for rent only to Qualified Persons, all in accordance with the terms of this Agreement;
 - (r) "Moderate Income Rental Housing Report" means a notarized annual report prepared by the Owner and delivered to the City providing information regarding each of the Moderate Income Rental Housing Units, including but not limited to the following:
 - (i) Unit number for the Moderate Income Rental Housing Unit;
 - (ii) monthly rent rate;
 - (iii) aggregate household income of the Occupants;

- (iv) number of Occupants residing therein;
- (v) number of bedrooms contained therein;
- (vi) length of occupancy of the current Tenant; and
- (vii) the results of the verification conducted by the Owner pursuant to Section 2.1(h),

and such report shall not include the names or personal information of any Tenants or Occupants and shall otherwise be satisfactory to the General Manager of Arts, Culture and Community Services in form and substance;

- (s) "Moderate Income Rental Housing Units" has the meaning ascribed to that term in Section 2.1(d)(i) and "Moderate Income Rental Housing Unit" means any one of such units;
- (t) "New Building" means any new buildings or structures to be built on the Lands as contemplated by the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Development Permit;
- (u) "Occupancy Permit" means a permit issued by the City authorizing the use and occupation of any New Building or any development or partial development on the Lands issued after the Effective Date;
- (v) "Occupants" means persons for whom a Rental Housing Unit serves as their principal residence and an "Occupant" means any one of them, as the context requires;
- (w) "Owner" means the registered owner of the Lands as of the Effective Date, namely, Arbutus Village Holdings Ltd., and its successors and permitted assigns;
- (x) "*Personal Information Protection Act*" means the *Personal Information Protection Act*, [S.B.C. 2003] c.63, as may be amended or replaced from time to time;
- (y) "Principal Residence" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this Agreement, a person may only have one principal residence;
- (z) "Qualified Person" means a person who:

- (i) at the beginning of such person's tenancy of a Moderate Income Rental Housing Unit, together with all other Occupants of such Moderate Income Rental Housing Unit, have an aggregate annual household income that is less than or equal to four (4) times the annual rent of such Moderate Income Rental Housing Unit; and
 - (ii) thereafter throughout such person's tenancy of a Moderate Income Rental Housing Unit, together with all other Occupants of such Moderate Income Rental Housing Unit, have an aggregate annual household income that is less than or equal to five (5) times the annual rent of such Moderate Income Rental Housing Unit;
- (aa) "Related Person" means, where the registered or beneficial owner of the Rental Housing Units is:
- (i) a corporation (as that term is defined in the *Business Corporations Act*, S.B.C. 2002, c.57), then a Related Person is:
 - (A) an officer, director or shareholder of such Owner or of another entity which is a shareholder of such Owner; or
 - (B) the spouse, parent, child, sibling, niece or nephew of any such officer, director or shareholder; and
 - (ii) an individual, then a Related Person is the spouse, parent, child, sibling, niece or nephew of such individual;
- (bb) "Rental Housing" means a Housing Unit which is not occupied by the registered or beneficial owner of the same or by a Related Person, but which is made available by such owner to the general public, at arm's length, for use as rental accommodation on a month-to-month basis or for a fixed term of not less than one (1) month in accordance with this Agreement, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto, including, without limitation, residential tenancy and human rights legislation in British Columbia;
- (cc) "Rental Housing Units" means, collectively, the Moderate Income Rental Housing Units and the Secured Market Rental Housing Units and "Rental Housing Unit" means any one of such units;
- (dd) "Rental Housing Units Parcel" has the meaning ascribed to that term in Section 7.1(a);
- (ee) "Replacement Moderate Income Rental Housing Unit" has the meaning ascribed to that term in Section 2.1(d) and "Replacement Moderate Income Rental Housing Units" means all of such units;
- (ff) "Replacement Rental Housing Units" has the meaning ascribed to that term in Section 2.1(d) and "Replacement Rental Housing Unit" means any one of such units;

- (gg) "Replacement Secured Market Rental Housing Unit" has the meaning ascribed to that term in Section 2.1(d) and "Replacement Secured Market Rental Housing Units" means all of such units;
- (hh) "*Residential Tenancy Act*" means the *Residential Tenancy Act* S.B.C. 2002, c. 78, as may be amended or replaced from time to time;
- (ii) "Rezoning Application" has the meaning ascribed to that term in Recital C;
- (jj) "Rezoning By-law" has the meaning ascribed to that term in Recital C;
- (kk) "Secured Market Rental Housing" means multiple Housing Units for use as Rental Housing within a building and which have monthly rents at market rates and which are made available for rent in accordance with the terms of this Agreement;
- (ll) "Secured Market Rental Housing Units" has the meaning ascribed to that term in Section 2.1(d)(ii) and "Secured Market Rental Housing Unit" means any one of such units;
- (mm) "Statement of Moderate Income Rental Housing Unit Eligibility" means a notarized statement, prepared by the Owner and signed by the Qualified Person, that states, subject to compliance with applicable privacy legislation, the following in respect of a Moderate Income Rental Housing Unit:
 - (i) confirmation that, to the best of the Owner's knowledge, the Tenant of such Moderate Income Rental Housing Unit is a Qualified Person;
 - (ii) general description of the actions taken by the Owner to verify that the Tenant of such Moderate Income Rental Housing Unit is a Qualified Person; and
 - (iii) such other information regarding such Moderate Income Rental Housing Unit and its Occupants as the General Manager of Arts, Culture and Community Services may otherwise require;

provided that such statement shall otherwise be satisfactory to the General Manager of Arts, Culture and Community Services in form and substance;
- (nn) "Tenancy Agreement" means a tenancy agreement, lease, licence or other agreement granting rights to occupy a Moderate Income Rental Housing Unit;
- (oo) "Tenant" means a Qualified Person who is a tenant of a Moderate Income Rental Housing Unit by way of a Tenancy Agreement;
- (pp) "Term" means the term of this Agreement, which will commence on the Effective Date and will end on the later of:
 - (i) the 60 year anniversary of the issuance of the final Occupancy Permit for the New Building; or

- (ii) the date as of which the New Building is demolished or substantially destroyed;
- (qq) "Vancouver" has the meaning ascribed to that term in Recital A(ii); and
- (rr) "*Vancouver Charter*" means the *Vancouver Charter* S.B.C. 1953, c. 55.

1.2 Interpretation. In this Agreement:

- (a) Party. Any reference to a party herein will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.
- (b) Singular; Gender. Wherever the singular or masculine or neuter is used in this Agreement, the same will be construed to mean the plural or the feminine or body corporate or politic, and vice versa, as the context or the parties so require.
- (c) Captions and Headings. The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.
- (d) References. References to the or this "Agreement" and the words "hereof" "herein" and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated Recital, Section, subsection or other subdivision is a reference to the designated Recital, Section, subsection or subdivision hereof.
- (e) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia.
- (f) Legislation. Any reference to a statute or by-law includes and is a reference to such statute or by-law and to the regulations made pursuant thereto in force on the Effective Date, with all amendments made thereto and as in force from time to time, and to any statute, by-law and regulations that may be passed which have the effect of supplementing or superseding such statutes, by-laws and regulations.
- (g) Time. Time will be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time will be local Vancouver, British Columbia time.

**ARTICLE 2
RESTRICTIONS ON USE OF LANDS AND SUBDIVISION**

2.1 The Owner covenants and agrees with the City, in respect of the use of the Lands and the construction and use of the New Building, that throughout the Term:

- (a) prior to the Discharge Date, the Lands and the New Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) after the Discharge Date, the Moderate Income Rental Housing Units, the Secured Market Rental Housing Units and the Rental Housing Units Parcel will not be used in any way that is inconsistent with the terms of this Agreement;
- (c) at its sole cost and expense, it will construct, fit and finish the New Building including the Rental Housing Units and any parking and indoor and outdoor amenity spaces, in accordance with this Agreement, the conditions of enactment of the Rezoning By-law, the Development Permit, the Building Permit and all applicable City by-laws and policies, all to the satisfaction of the City;
- (d) with respect to the Rental Housing Units:
 - (i) not less than 13 Housing Units, consisting of five one-bedroom units and eight two-bedroom units and with an aggregate floor area of not less than 975 sq. m (10,500 sq. ft.) in the New Building will be used only for the purpose of providing Moderate Income Rental Housing (the "Moderate Income Rental Housing Units"); and
 - (ii) not less than 91 Housing Units with an aggregate floor area of not less than 9,202 sq. m (99,050 sq. ft.) in the New Building will be used only for the purpose of providing Secured Market Rental Housing (the "Secured Market Rental Housing Units");

in accordance with the terms of this Agreement, and if the New Building is damaged, destroyed or demolished before the 60 year anniversary of the issuance of the final Occupancy Permit for the New Building, then it will promptly take all steps reasonably necessary to enable it to repair the New Building or build a replacement building or buildings on the Lands, which repaired or replacement building(s) built on the Lands (together with any remaining undestroyed or undemolished building) will contain not less than the same number and type of replacement Housing Units as the New Building formerly contained, which replacement Housing Units (the "Replacement Rental Housing Units"), during the remainder of the Term, will also be used only for the purpose of providing Moderate Income Rental Housing (each such replacement Housing Units hereinafter referred to as a "Replacement Moderate Income Rental Housing Unit") and Secured Market Rental Housing (each such replacement Housing Unit hereinafter referred to as a "Replacement Secured Market Rental Housing Unit"), respectively, in the same percentages as set out in this Section and in accordance with the terms of this Agreement and the applicable by-laws of the City and such Replacement

Rental Housing Units will be subject, for the remaining duration of the Term, to the same use restrictions, respectively, as the Moderate Income Rental Housing Units, the Secured Market Rental Housing Units and the Rental Housing Units Parcel are pursuant to this Agreement;

- (e) not less than 35% of each of the Secured Market Rental Housing Units and Moderate Income Rental Housing Units will have two or more bedrooms and be designed to meet the City's "High Density Housing for Families with Children Guidelines";
- (f) each of the Moderate Income Rental Housing Units shall not be rented, leased, licenced, used or otherwise permitted to be occupied unless it is rented, leased, licenced, used to or occupied by an Qualified Person and except in accordance with the following conditions:
 - (i) each Moderate Income Rental Housing Unit shall be rented only pursuant to a Tenancy Agreement, which Tenancy Agreement shall include a copy of this Agreement;
 - (ii) each Moderate Income Rental Housing Unit shall be rented for a monthly rent not exceeding the rent permitted to that type of Moderate Income Housing Unit, as described in Section 2.1(p);
 - (iii) each Moderate Income Rental Housing Unit shall be occupied only by a Qualified Person who is occupying such Moderate Income Rental Housing Unit as his or her Principal Residence and such other Occupants of the Qualified Person's household as specified in the Tenancy Agreement between the Owner and the Qualified Person for the rental thereof;
 - (iv) each Moderate Income Rental Housing Unit shall have at least one Occupant per bedroom thereof;
 - (v) each Tenancy Agreement shall include:
 - (A) a clause requiring the Tenant and each permitted Occupant of the respective Moderate Income Rental Housing Unit to comply with this Agreement;
 - (B) the names of all Occupants of the respective Moderate Income Rental Housing Unit and a clause prohibiting any person not identified in the Tenancy Agreement from residing at the Moderate Income Rental Housing Unit for more than 60 consecutive days or more than 90 days total in any calendar year, unless the Tenant receives prior written consent from the Owner;
 - (C) a clause entitling the Owner, if and to the extent permitted pursuant to the *Residential Tenancy Act*, to terminate the Tenancy Agreement if:

- I. the respective Moderate Income Rental Housing Unit is occupied by a person or persons other than those persons identified in the Tenancy Agreement for more than 60 consecutive days or more than 90 days total in any calendar year without the prior written consent from the Owner;
- II. the respective Moderate Income Rental Housing Unit does not have at least one Occupant per bedroom thereof;
- III. the annual aggregate Income of all Occupants of the respective Moderate Income Rental Housing Unit rises above the applicable maximum amount specified in Section 1.1(z)(ii);
- IV. the respective Moderate Income Rental Housing Unit remains vacant for six months or longer, cumulatively, within a calendar year, without the prior written consent of the Owner, or ceases to be the Principal Residence of the Tenant, notwithstanding the timely payment of rent; or
- V. the Tenant subleases the respective Moderate Income Rental Housing Unit or assigns the Tenancy Agreement in whole or in part;

and in the case of each breach (if and to the extent permitted pursuant to the *Residential Tenancy Act*), the Owner hereby agrees with the City to forthwith provide to the Tenant a notice of termination that will be effective 30 days, except in respect of Sections 2.1(f)(v)(C)I to 2.1(f)(v)(C)III, in which case the termination will be effective six (6) months, following the date that the Owner has delivered the notice of termination to the respective Tenant and the Owner shall make reasonable efforts to cause all Occupants of the respective Moderate Income Rental Housing Unit to vacate the respective Moderate Income Rental Housing Unit on or before the effective date of termination of the Tenancy Agreement;

(D) a clause:

- I. wherein the Tenant consents to the collection, use and retention by the Owner and disclosure to the City of information, documentation and evidence described in Section 2.1(h); and
- II. requiring the Tenant to deliver to the Owner the information, documentation and evidence described in Section 2.1(h)(ii) every five (5) years following the date

on which the Tenant first occupies the Moderate Income Rental Housing Unit;

- (E) a clause prohibiting the Tenant from assigning its interest in the Tenancy Agreement or subletting the respective Moderate Income Rental Housing Unit; and
- (F) a term that is either on a month-to-month basis or for a fixed term of less than six (6) months;

unless otherwise permitted by the General Manager of Arts, Culture and Community Services in his or her sole discretion;

- (g) if the Owner has terminated a Tenancy Agreement for the reasons specified in Sections 2.1(f)(v)(C)I to 2.1(f)(v)(C)III, the Owner shall offer a different Rental Housing Unit for rent to the former Tenant (on such terms and conditions as the Owner may determine, in its sole discretion, subject to the requirements of this Agreement), subject to the availability for rental of Rental Housing Units and the eligibility of the former Tenant in respect of other Moderate Income Rental Housing Units;
- (h) in connection with Section 2.1(f), throughout the Term, the Owner shall:
 - (i) prior to renting a Moderate Income Rental Housing Unit to a prospective tenant, or upon the change of any Occupants residing within a Moderate Income Rental Housing Unit from the Occupants listed in the Tenancy Agreement, verify, by obtaining all information, documentation or evidence necessary, including but not limited to a Statement of Moderate Income Rental Housing Unit Eligibility, or such other information, documentation or evidence that the General Manager of Arts, Culture and Community Services may deem necessary, that such prospective tenant is a Qualified Person and that there will be at least one Occupant per bedroom for such Moderate Income Rental Housing Unit upon occupancy; and
 - (ii) not less than once every five (5) years after the date on which a Moderate Income Rental Housing Unit was rented to a Tenant, verify, by obtaining all information, documentation or evidence necessary, including but not limited to a Statement of Moderate Income Rental Housing Unit Eligibility, or such other information, documentation or evidence that the General Manager of Arts, Culture and Community Services may deem necessary, that such prospective tenant is an Qualified Person and that such Moderate Income Rental Housing Unit continues to have at least one Occupant per bedroom;
- (i) the Owner will not rent, licence to use or sublet, nor will it allow to be rented, licenced to use or sublet, any Rental Housing Unit for a term of less than one month at a time;
- (j) except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any

Rental Housing Unit to be sold or otherwise transferred unless title to every one of the Rental Housing Units is sold or otherwise transferred together and as a block to the same legal and beneficial owner, as applicable, and subject to Section 9.9;

- (k) the Owner will not suffer, cause or permit, the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, to be subdivided, whether by subdivision plan, strata plan or otherwise, without the prior written consent of the Director of Legal Services which consent may be arbitrarily withheld, subject to Article 7 and subject to any other written agreements between the Owner and the City in respect of all or part of the Lands;
- (l) any sale of any Rental Housing Unit in contravention of the covenant in Section 2.1(j), and any subdivision of the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, in contravention of the covenant in Section 2.1(k), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;
- (m) the Owner will:
 - (i) prior to the Discharge Date, keep and maintain the New Building and all parts thereof (including any related amenity and parking spaces); and
 - (ii) after the Discharge Date, keep and maintain the Rental Housing Units and the Rental Housing Units Parcel and all parts thereof (including any related amenity and parking spaces),

subject to the *Residential Tenancy Act*, in good repair and in a safe, clean, neat and tidy condition, to the standard of a reasonable and prudent owner of similar buildings;

- (n) if:
 - (i) prior to the Discharge Date, the New Building or any part thereof, is damaged; and
 - (ii) after the Discharge Date, the Rental Housing Units are damaged,
 it will, subject to the *Residential Tenancy Act*, promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred reasonable wear and tear excepted;
- (o) the Owner will insure, or cause to be insured:
 - (i) prior to the Discharge Date, the New Building; and
 - (ii) after the Discharge Date, the Rental Housing Units Parcel;

to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands; and

(p) with respect to the Moderate Income Rental Housing Units:

(i) the average initial starting monthly rents for each unit type will be at or below the following amounts:

<u>UNIT TYPE</u>	<u>AVERAGE MONTHLY STARTING RENTS</u>
Studio	\$950
1 Bedroom	\$1,200
2 Bedrooms	\$1,600
3 Bedrooms	\$2,000

(ii) the rents to be charged by the Owner to the first Tenants of each of the Moderate Income Housing Rental Units in the New Building following issuance of the Occupancy Permit are as set forth in the rent roll attached hereto as Schedule A;

the Owner shall not increase the monthly rents for any of the Moderate Income Rental Housing Units, except for annual increases in monthly rent by an amount not to exceed the annual allowable increase in rent permitted under the *Residential Tenancy Act* and for clarity, the Owner shall not increase the monthly rent for a Moderate Income Rental Housing Unit in any other circumstance, including but not limited to, any change in tenancy or occupancy of a Moderate Income Rental Housing Unit.

ARTICLE 3 DEVELOPMENT PERMIT RESTRICTION ON THE LANDS

3.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:

(a) the Lands and the New Building will not be used or occupied except as follows:

(i) the Owner will not apply for any Development Permit, and will take no action, directly or indirectly, to compel the issuance of any Development Permit until such time as the Owner has delivered a rent roll to, and to the satisfaction of, the General Manager of Arts, Culture and Community Services confirming the rents proposed to be charged to the first Tenants of the Moderate Income Rental Housing Units following the issuance of the Occupancy Permit, which rents shall comply with

those applicable to the Moderate Income Rental Housing Units as described herein; and

- (ii) the City will be under no obligation to issue any Development Permit until such time as the Owner has complied with Section 3.1(a)(i); and
- (b) without limiting the general scope of Article 6, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of a Development Permit until there is compliance with the provisions of this Article 3.

ARTICLE 4 OCCUPANCY RESTRICTION ON THE LANDS

4.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:

- (a) the Lands and the New Building will not be used or occupied except as follows:
 - (i) the Owner will not apply for any Occupancy Permit in respect of, and will not suffer or permit the occupation of, the New Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit until such time as the Owner has delivered, to the satisfaction of the General Manager of Arts, Culture and Community Services:
 - (A) a final rent roll confirming the rents to be charged to the first Tenants of the Moderate Income Rental Housing Units following issuance of the Occupancy Permit, which rents shall comply with those applicable to the Moderate Income Rental Housing Units as described herein; and
 - (B) proof of insurance, consistent with the requirements of Section 2.1(o), is in force and effect, in form and substance satisfactory to the City;
 - (ii) the City will be under no obligation to issue any Occupancy Permit, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 4.1(a)(i); and
- (b) without limiting the general scope of Article 6, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit until there is compliance with the provisions of this Article 4.

**ARTICLE 5
RECORD KEEPING**

5.1 The Owner will keep accurate records pertaining to the use, occupancy and rental rates charged of/for the Rental Housing Units, such records to be to the satisfaction of the General Manager of Arts, Culture and Community Services. The Owner will:

- (a) on each anniversary of the date of issuance of the first Occupancy Permit for any portion of the Rental Housing Units Parcel (or at the request of the City), provide an updated Moderate Income Rental Housing Report to the General Manager of Arts, Culture and Community Services;
- (b) within ninety (90) days of:
 - (i) a change in any Occupant of a Moderate Income Rental Housing Unit;
 - (ii) the date that is the fifth anniversary of the date on which a Moderate Income Rental Housing Unit was rented to a Tenant and every five (5) years thereafter; and
 - (iii) at the request of the General Manager of Arts, Culture and Community Services, from time to time,
 complete and deliver to the City a Statement of Moderate Income Rental Housing Unit Eligibility in respect of such Moderate Income Rental Housing Unit;
- (c) at the request of the General Manager of Arts, Culture and Community Services, from time to time:
 - (i) make such records available for audit, inspection and copying by City staff, subject to applicable restrictions in any tenancy, privacy and other laws which place limitations on such disclosure; and
 - (ii) provide evidence of the insurance required to be taken out pursuant to Section 2.1(o); and
- (d) comply with the *Personal Information Protection Act* in collecting, using, retaining and disclosing the information of any person, Tenant or Occupant pursuant to its obligations under this Agreement and any Tenancy Agreement.

**ARTICLE 6
RELEASE AND INDEMNITY**

6.1 Release and Indemnity. Subject to Section 6.2, the Owner hereby:

- (a) releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner and covenants and agrees to indemnify and save harmless the City and all City Personnel from and against all Losses which may arise, accrue or be incurred by the City or any City Personnel or which are made by any person, firm or corporation against the

City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to:

- (i) by reason of the City or City Personnel:
 - (A) reviewing, accepting or approving the design, specifications, materials and methods for construction of the New Building or any part thereof;
 - (B) withholding any permit pursuant to this Agreement; or
 - (C) exercising any of its rights under any Section 219 covenant, *Vancouver Charter* Section 562.2 housing agreement or other right granted to the City pursuant to this Agreement; or
- (ii) that otherwise arise out of, or would not have been incurred but for this Agreement;

whether or not such Losses are the result of, or relate in any way to any negligent acts or omissions on the part of the City or the City Personnel; and

- (b) covenants and agrees to indemnify and save harmless the City and City Personnel, from and against all Losses which may arise or accrue to any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to, by reason of:
 - (i) any negligent act or omission or wilful misconduct of the Owner or any of the Owner's Personnel in connection with the observance and performance of the obligations of the Owner under this Agreement; or
 - (ii) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement.
- (c) The indemnities in this Article 6 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

6.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to Section 6.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 6.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 6.2(a) in the following circumstances:
 - (i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;

- (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or
- (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential claims affecting or involving the City;

provided however that if the City wishes to settle any claim, the City will not do so without the prior consent of the Owner, which consent will not be unreasonably withheld. In conducting any defence or making any settlement, the City will act in a manner reasonably consistent with the manner in which the City would act in connection with the defence or settlement of claims, suits, demands, actions or proceedings which would not be indemnified against under the provisions of this Section 6.2(b); and

- (c) Regardless of whether the claim is being defended under Section 6.2(a) or Section 6.2(b), the party having conduct of the proceedings will, upon written request of the other party, provide to the other party all information in its possession relating to the proceedings which may be properly disclosed at law. If the party not having conduct of the proceedings so requests in writing in a timely fashion, the party having conduct of the proceedings will join the other party as a third party to the proceedings.

6.3 Survival of Release and Indemnities. The release and indemnities in this Article 6 will remain effective, and survive any modification of, or partial release or release of the covenants created by this Agreement, and any termination of this Agreement, whether by fulfilment of the covenants contained in this Agreement or otherwise.

ARTICLE 7 SUBDIVISION OF THE LANDS

7.1 By Air Space Subdivision Plan. Notwithstanding Section 2.1(k):

- (a) subject to compliance by the Owner with all applicable requirements of the City's Approving Officer and the City's elected Council, this Agreement and all applicable laws and by-laws, the City will not unreasonably withhold its consent to a subdivision of the Lands and the New Building by the deposit of an air space subdivision plan, provided that all the Rental Housing Units will thereafter be contained within a single air space parcel (the "Rental Housing Units Parcel"); and
- (b) following such a subdivision and the issuance of a final occupancy permit for the Rental Housing Units Parcel, the Owner may apply to the City for a partial discharge of this Agreement (the "Discharge") with respect to any parcel other than the Rental Housing Units Parcel and the City will on request of the Owner execute and deliver a registrable Discharge in respect of such other parcel(s) (whereupon this Agreement will cease to apply to any portion of the Lands other than the Rental Housing Units Parcel) provided, that:

- (i) the Director of Legal Services is satisfied that the Discharge will not unreasonably alter, restrict or limit the City's rights and the Owner's agreements and obligations in respect of the Rental Housing Units, or in respect of the Rental Housing Units Parcel, pursuant to this Agreement;
- (ii) the Discharge will be in form and substance acceptable to the Director of Legal Services and will be prepared by the Owner at its cost;
- (iii) the City will have a reasonable amount of time to execute and return the Discharge; and
- (iv) the preparation and registration of the Discharge will be without cost to the City.

ARTICLE 8 NOTICES

8.1 All notices, demands or requests of any kind which one party may be required or permitted to give to the other in connection with this Agreement, will be in writing and will be given by registered mail or personal delivery, addressed as set forth below. Any such notice, demand or request will be deemed given:

- (a) if made by registered mail, on the earlier of the day receipt is acknowledged by the addressee or the third day after it was mailed, except when there is a postal service disruption during such period, in which case delivery will be deemed to be completed upon actual delivery of the notice, demand or request; and
- (b) if personally delivered, on the date when delivered.

If to the City, addressed to:

City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

Attention: General Manager of Arts, Culture and Community Services with a concurrent copy to the Director of Legal Services

If to the Owner, addressed to:

Arbutus Village Holdings Ltd.
17th Floor - 900 West Georgia Street
Vancouver, British Columbia
V6C 2W6

Attention: President

or to such other address in Canada as either party may specify in writing to the other party in the manner described above, provided that if and when the owner of the Land or any part thereof should change, in the absence of any such specification, then to the address as set out in the State of Title Certificate for that particular parcel of land.

**ARTICLE 9
MISCELLANEOUS**

9.1 Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner will be covenants the burden of which will run with and will bind the Lands and will attach thereto subject to Article 7. Upon the sale or transfer of any legal or beneficial interest in the Lands and/or the New Building or any part thereof in accordance with the provisions of Section 9.9, the parties agree that the covenants and agreements herein contained shall only be binding upon the transferring party in respect of a breach or acts or omissions occurring during its ownership.

9.2 Agreement to be a First Charge. The Owner agrees to cause, at its sole cost and expense, the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:

- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
- (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of any rezoning or any Development Permit; and
- (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.

9.3 Owner Operating on Behalf of the City. The City has required that the Owner enter into this Agreement to satisfy the Housing Condition, as described in Recital C and notwithstanding that the Owner is the owner of the Lands, the Owner and the City acknowledge and agree that for the duration of the Term, the Owner shall operate the Moderate Income Rental Housing Units, at the Owner's sole cost and expense, on behalf of the City in accordance with the terms and conditions of this Agreement.

9.4 Enforcement. This Agreement may be enforced by mandatory and prohibitory orders of the court. In any action to enforce this Agreement if the City is entitled to court costs, it will be entitled to court costs on a solicitor and own client basis.

9.5 Severability. All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable; the balance of the obligations and covenants will remain and be binding.

9.6 **Vancouver Charter.** Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter*, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.

9.7 **Waiver.** The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.

9.8 **Further Assurances.** The Owner will execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement including all acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter*.

9.9 **Sale of Lands and New Building or Part Thereof.** Prior to the sale or transfer of any legal or beneficial interest (other than the transfer of an interest by way of mortgage, where the mortgagee has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage), and subject always to Sections 2.1(j) and 2.1(k):

- (a) prior to the Discharge Date, the Owner of the Lands and the New Building; or
- (b) after the Discharge Date, the Owner of the Rental Housing Units Parcel;

will cause the purchaser/transferee to enter into an assumption agreement with the City, in form and substance satisfactory to the Director of Legal Services, pursuant to which the purchaser/transferee will agree to be bound by all of the obligations, agreements and indemnities of such Owner under this Agreement. The provisions in this Section 9.9 will apply equally to all subsequent purchasers/transferees (other than a mortgagee that has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage).

9.10 **Owner's Representations.** The Owner represents and warrants to and covenants and agrees with the City that:

- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;

- (b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in the title to the Lands;
- (c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and
- (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.

9.11 Liability. Notwithstanding anything to the contrary contained herein, the Owner shall not be liable under any of the covenants and agreements contained herein where such liability arises by reason of an act or omission occurring after the Owner ceases to have any further interest in the Lands.

9.12 Enurement. This Agreement will enure to the benefit of and be binding upon the City and its successors and assigns, and this Agreement will enure to the benefit of and be binding upon the Owner and its successors and assigns.

IN WITNESS WHEREOF the parties have executed this Agreement on the Forms C or D which are a part hereof.

SCHEDULE A - MODERATE INCOME RENTAL UNITS RENT ROLL

ARBUTUS BLOCK A- MODERATE INCOME RENTAL HOUSING (MIR) UNITS

MIR RATES	
Unit Type	Target Rents (at opening)
Studio	\$950
1 Bed	\$1,200
2 Bed	\$1,600
3 Bed	\$2,000

No.	SUITE NUMBER	UNIT TYPE	MONTHLY RENT
1	Y404	2 Bed	\$1,600.00
2	Y405	2 Bed	\$1,600.00
3	Y406	1 Bed	\$1,200.00
4	Y407	2 Bed	\$1,600.00
5	Y408	1 Bed	\$1,200.00
6	Y409	1 Bed	\$1,200.00
7	Y410	1 Bed	\$1,200.00
8	Y411	1 Bed	\$1,200.00
9	Y420	2 Bed	\$1,600.00
10	Y418	2 Bed	\$1,600.00
11	Y417	2 Bed	\$1,600.00
12	Y416	2 Bed	\$1,600.00
13	Y415	2 Bed	\$1,600.00
TOTAL			\$18,800.00

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA5700843 and the Assignment of Rents registered under number CA5700844;
- (b) "Existing Chargeholder" means Bank of Nova Scotia;
- (c) "New Charges" means the registrable charges and encumbrances created by and contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

For \$10 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (a) consents to the Owner granting the New Charges to the City; and
- (b) agrees with the City that the New Charges charge the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charges, and they had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

END OF DOCUMENT

EXPLANATION

**Authorization to enter into a Housing Agreement (Social Housing)
Re: 2133 Nanton Avenue and 4189 Yew Street**

After the Public Hearing on July 24, 2018, Council approved in principle a Housing Agreement (Social Housing) to be entered into by the City and the land owner, on terms satisfactory to the General Manager of Arts, Culture and Community Services and the Director of Legal Services, prior to enactment of the CD-1 By-law. The Housing Agreement was accepted and executed by the applicant, and the City now seeks enactment of a By-law as contemplated by section 565.2 of the Vancouver Charter, to authorize such Housing Agreement and to authorize the City to enter into the Housing Agreement with the land owner.

Director of Legal Services
January 22, 2020



2133 Nanton Avenue and 4189 Yew Street

BY-LAW NO.

**A By-law to enact a Housing Agreement
for 2133 Nanton Avenue and 4189 Yew Street**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council authorizes the City to enter into a Housing Agreement with the owner of certain lands described as:

029-960-835

Lot 1 District Lot 526 Group 1 New Westminster District
Plan EPP59809

in substantially the form and substance of the Housing Agreement attached to this By-law, and also authorizes the Director of Legal Services to execute the agreement on behalf of the City, and to deliver it to the owner on such terms and conditions as the Director of Legal Services deems fit.

2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this day of , 2020

Mayor

City Clerk

LAND TITLE ACT
FORM C (Section 233) CHARGE
GENERAL INSTRUMENT - PART 1 Province of British Columbia

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.



1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)
[Applicant's lawyer to insert]

Social Housing Agreement

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
(PID) (LEGAL DESCRIPTION)
029-960-835 LOT 1 DISTRICT LOT 526 GROUP 1 NEW WESTMINSTER DISTRICT PLAN
EPP59809

STC? YES

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION
SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)
(a) Filled Standard Charge Terms D.F. No. (b) Express Charge Terms Annexed as Part 2
A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):
ARBUTUS VILLAGE HOLDINGS LTD. (INC. NO. BC0351064)
THE BANK OF NOVA SCOTIA (AS TO PRIORITY)

6. TRANSFEREE(S): (including postal address(es) and postal code(s))
CITY OF VANCOUVER

453 WEST 12TH AVENUE
VANCOUVER BRITISH COLUMBIA
V5Y 1V4 CANADA

7. ADDITIONAL OR MODIFIED TERMS:
N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

LAUREN MUIRHEAD
Barrister & Solicitor
McCarthy Tétrault LLP
SUITE 2400 - 745 THURLOW STREET
VANCOUVER, B.C. V6E 0C5
DIRECT 604-643-7952

Execution Date		
Y	M	D
19	11	27

Transferor(s) Signature(s)

ARBUTUS VILLAGE HOLDINGS LTD., by its authorized signatory (ies):

Print Name: Amin Lalji

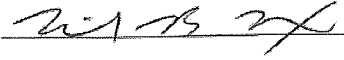
Print Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED

Officer Signature(s)



GOWLING WLG (CANADA) LLP
1 FIRST CANADIAN PLACE
100 KING ST WEST
SUITE 1600
TORONTO, ON
M5X 1A5.

Execution Date

Y	M	D
19	12	02

Transferor / Borrower / Party Signature(s)

THE BANK OF NOVA SCOTIA, by its
authorized signatory(ies):


Print Name: Kristen Canario
Associate


Print Name: Andrew Black
Director

CITY OF VANCOUVER, by its
authorized signatory:

Print Name: _____

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM E
SCHEDULE

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Entire Instrument

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting the above Covenant priority over Mortgage CA5700843 and Assignment of Rents CA5700844

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
--------------------	------------	------------------------

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
--------------------	------------	------------------------

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
--------------------	------------	------------------------

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
--------------------	------------	------------------------

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND BUILDING USE COVENANT
(Social Housing)

2133 NANTON AVENUE AND 4189 YEW STREET (ARBUTUS CENTRE)

WHEREAS:

A. It is understood and agreed that this instrument and Agreement shall be read as follows:

- (i) the Transferor, ARBUTUS VILLAGE HOLDINGS LTD., is called the "Owner" as more particularly defined in Section 1.1; and
- (ii) the Transferee, CITY OF VANCOUVER, is called the "City" or the "City of Vancouver" when referring to the corporate entity and "Vancouver" when referring to geographic location;

B. The Owner is the registered owner of the Lands;

C. The Owner made an application to amend CD-1 By-law No. 11658, as amended by By-law No. 11749 (collectively, the "CD-1 By-law") and after a public hearing to consider the rezoning application, the rezoning application was approved by City Council in principle subject to, *inter alia*, fulfilment of the following condition prior to the enactment of a by-law to amend the CD-1 By-law (the "Rezoning By-law"):

"13. *Make arrangements to the satisfaction of the Director of Legal Services and the General Manager of Arts, Culture and Community Services to enter into a Housing Agreement applicable to the social housing air space parcel for 60 years or the life of the building, whichever is greater, which will contain the following terms and conditions:*

- (i) *A no separate-sales covenant;*
- (ii) *A no stratification covenant;*
- (iii) *A provision that none of such units will be rented for less than one month at a time;*
- (iv) *A requirement that all units comply with the definition of "social housing" in the applicable DCL By-law.*

Note to Applicant: This condition will be secured by a Housing Agreement to be entered into by the City by by-law enacted pursuant to section 565.2 of the Vancouver Charter."

(the "Social Housing Condition"); and

D. The Owner and the City are now entering into this Agreement to satisfy the Social Housing Condition.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, pursuant to Section 565.2 of the *Vancouver Charter* and to Section 219 of the *Land Title Act*, agree as follows in respect of the use of the Lands and the New Building:

**ARTICLE 1
DEFINITIONS AND INTERPRETATIONS**

1.1 Definitions. In this Agreement the following terms have the definitions now given:

- (a) "Agreement" means this housing agreement and building use covenant, including the foregoing Recitals;
- (b) "CD-1 By-law" has the meaning ascribed to that term in Recital C;
- (c) "City" and "City of Vancouver" are defined in Recital A(ii);
- (d) "City Manager" means the chief administrator from time to time of the City and his/her successors in function and their respective nominees;
- (e) "City Personnel" means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (f) "Commencement Date" means the date as of which this Agreement has been submitted to the Land Title Office;
- (g) "Development Permit" means a development permit issued by the City authorizing development on the Lands or any portion of the Lands as contemplated by the Rezoning By-law at any time following the date this Agreement is fully executed by the parties;
- (h) "Director of Legal Services" means the chief administrator from time to time of the Legal Services Department of the City and her/his successors in function and their respective nominees;
- (i) "Discharge" has the meaning ascribed to that term in Section 7.1(b);
- (j) "Discharge Date" means the date upon which the Owner files the Discharge with the Land Title Office;
- (k) "Dwelling Unit" means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (l) "General Manager of Arts, Culture and Community Services" means the person appointed from time to time as the City's General Manager of Arts,

Culture and Community Services and his/her successors in function and delegates and their respective nominees;

- (m) "Housing Income Limit" or "HIL" means the income required to pay the average market rent for an appropriately sized unit in the private market in Vancouver, determined annually by the British Columbia Housing Management Commission or its successors in function, which is derived from the Canada Mortgage and Housing Corporation's Annual Rental Market Survey or an equivalent publication (as approved by the General Manager of Arts, Culture and Community Services);
- (n) "*Land Title Act*" means the *Land Title Act*, R.S.B.C. 1996, c. 250, and amendments thereto and re-enactments thereof;
- (o) "Lands" means the lands described in Item 2 in the Form C attached hereto; provided, however, that if the Lands are at any time subdivided by air space parcel subdivision, and this Agreement is thereafter discharged from one or more of the resulting legal parcels, then "Lands" will thereafter mean only the part of the Lands within the legal parcel(s) against which it remains registered;
- (p) "Losses" means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, liabilities, indirect or consequential damages (including loss of profit and loss of use and damages arising out of delays) and expenses of every nature or kind whatsoever;
- (q) "New Building" means each new building or structure to be built on the Lands as contemplated by the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Development Permit;
- (r) "Occupancy Permit" means a permit issued by the City authorizing the use and occupation of any New Building, or any development or partial development on the Lands;
- (s) "Owner" means the Transferor, ARBUTUS VILLAGE HOLDINGS LTD., and any successors in title to the Lands or a portion of the Lands;
- (t) "Rental Housing" means a Dwelling Unit which is not occupied by the registered or beneficial owner of the same, but which is made available by such owner to the general public (subject to Article 2), at arm's length, for use as rental accommodation on a month-to-month or for a fixed term of not less than one (1) month in accordance with this Agreement, and pursuant to reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto;
- (u) "Replacement Social Housing Unit" has the meaning ascribed to that term in section 2.1(b) and "Replacement Social Housing Units" means all of such units;

- (v) "Residential Tenancy Act" means the *Residential Tenancy Act* S.B.C. 2002, c. 78;
- (w) "Rezoning By-law" has the meaning ascribed to that term in Recital C;
- (x) "Social Housing" has the meaning ascribed to that term in the Vancouver Development Cost Levy By-law No. 9755, namely Rental Housing:
 - (i) in which at least 30% of the dwelling units are occupied by households with incomes below Housing Income Limits, as set out in the current "Housing Income Limits" table published by the British Columbia Housing Management Commission, or equivalent publication;
 - (ii) which is owned by a non-profit corporation, by a non-profit co-operative association, or by or on behalf of the City, the Province of British Columbia or Canada; and
 - (iii) in respect of which the registered owner or ground lessee of the freehold or leasehold title to the land on which the housing is situate has granted to the City a Section 219 covenant, housing agreement, or other security for the housing commitments required by the City, registered against the freehold or leasehold title, with such priority of registration as the City may require;
- (y) "Social Housing Condition" has the meaning ascribed to that term in Recital C;
- (z) "Social Housing Parcel" has the meaning ascribed to that term in Section 7.1(a);
- (aa) "Social Housing Units" has the meaning ascribed to that term in Section 2.1(c), and "Social Housing Unit" means any one of such Social Housing Units;
- (bb) "Term" means the term of this Agreement, which will commence on the Commencement Date and will end on the later of:
 - (i) the date as of which the New Building is demolished or substantially destroyed; or
 - (ii) 60 years from the date when the final Occupancy Permit is issued for the New Building; and
- (cc) "*Vancouver Charter*" means the Vancouver Charter S.B.C. 1953, c. 55.

1.2 Interpretation. In this Agreement:

- (a) Party. Any reference to a party herein will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.

- (b) Singular; Gender. Wherever the singular or masculine or neuter is used in this Agreement, the same will be construed to mean the plural or the feminine or body corporate or politic, and vice versa, as the context or the parties so require.
- (c) Captions and Headings. The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.
- (d) References. References to the or this "Agreement" and the words "hereof" "herein" and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated Recital, Section, subsection or other subdivision is a reference to the designated Recital, Section, subsection or subdivision hereof.
- (e) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia. Any reference to a statute is to the statute and its regulations in force on the date the Form C General Instrument - Part 1 is fully executed and to subsequent amendments to or replacements of the statute or regulations.
- (f) Legislation. Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and as in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes and regulations.
- (g) Time. Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time shall be local Vancouver, British Columbia time.

**ARTICLE 2
RESTRICTIONS ON USE OF LANDS AND SUBDIVISION**

- 2.1 The Owner covenants and agrees with the City, in respect of the use of the Lands and the construction and use of the New Building, that throughout the Term:
- (a) prior to the Discharge Date, the Lands and the New Building will not be used in any way that is inconsistent with the terms of this Agreement;
 - (b) after the Discharge Date, the Social Housing Units and the Social Housing Parcel will not be used in any way that is inconsistent with the terms of this Agreement;
 - (c) it will design, construct, equip and finish the New Building and therein with not less than 125 Dwelling Units as approved in the Development Permit, which will

be for use only as Social Housing (the "Social Housing Units"), in accordance with the Rezoning By-law, the Development Permit, any building permit issued pursuant thereto, the requirements of this Agreement, the applicable City by-laws and policies, all to the satisfaction of the City and if the New Building is damaged, destroyed or demolished before the 60 year anniversary of the issuance of the final Occupancy Permit for the New Building, then it will promptly take all steps reasonably necessary to enable it to repair the New Building or build a replacement building or buildings on the Lands, which repaired New Building or replacement building(s) built on the Lands (together with any remaining undestroyed or undemolished building) will contain not less than the same number and type of replacement Social Housing Units as the New Building formerly contained (each such replacement Social Housing Unit hereinafter referred to as a "Replacement Social Housing Unit") and will be subject, for the duration of the Term, to the same use restrictions as the Social Housing Units and the New Building are pursuant to this Agreement;

- (d) the New Building will be used only in a manner that ensures its continued compliance with the definition of Social Housing;
- (e) not less than 30% of the Social Housing Units will be:
 - (i) occupied only by households with incomes below the then current applicable HIL; and
 - (ii) each rented at a rate no higher than 30% of the aggregate household income of the members of the household occupying such Social Housing Unit;
- (f) the Social Housing Units will only be used for the purpose of providing Rental Housing;
- (g) except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any Social Housing Unit to be sold or otherwise transferred unless:
 - (i) every Social Housing Unit is sold or otherwise transferred together and as a block to the same legal and beneficial owner; and
 - (ii) the sale or transfer is to the City or it otherwise obtains the express written consent of the City;
- (h) it will not suffer, cause or permit the Lands, or any part thereof, to be subdivided by strata plan or air space plan without the prior written consent of the City, which consent may be arbitrarily withheld, subject to Article 7 and subject to any other written agreements between the Owner and the City in respect of all or part of the Lands;
- (i) any sale or other transfer of title to a Social Housing Unit in contravention of the covenant in Section 2.1(g), and any subdivision of the Lands in contravention of Section 2.1(h), will in each case be of no force or effect, and

the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;

- (j) the Social Housing Units will only be rented on a month-to-month or longer basis and in no case for less than at least 30 consecutive days;
- (k) it will:
 - (i) prior to the Discharge Date, keep and maintain the New Building and all parts thereof; and
 - (ii) after to the Discharge Date, keep and maintain the Social Housing Units and the Social Housing Parcel and all parts thereof,

subject to the *Residential Tenancy Act*, in good repair and in a safe, clean, neat and tidy condition, to the standard of a reasonable and prudent owner of similar buildings;

- (l) if:
 - (i) prior to the Discharge Date, the New Building or any part thereof, is damaged; and
 - (ii) after the Discharge Date, the Social Housing Units are damaged,

it will, subject to the *Residential Tenancy Act*, promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred reasonable wear and tear excepted; and

- (m) it will insure, or cause to be insured:
 - (i) prior to the Discharge Date, the New Building; and
 - (ii) after the Discharge Date, the Social Housing Parcel;

to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands.

ARTICLE 3 OCCUPANCY RESTRICTION ON THE LANDS

3.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:

- (a) the Owner will not apply for any Occupancy Permit in respect of, and will not suffer or permit the occupation of, the New Building, and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit for the New Building, until such time as the Owner has delivered, to the General

Manager of Arts, Culture and Community Services, in form and substance satisfactory to the General Manager of Arts, Culture and Community Services:

- (i) proof of the insurance, consistent with the requirements of Section 2.1(m), is in force and effect; and
 - (ii) a final rent roll confirming the rents to be charged to the first occupants of the Social Housing Units following issuance of the Occupancy Permit on a per unit basis, and the unit type mix and size, which rents, unit type mix and size will comply with those applicable to the Social Housing Units; and
- (b) the City will be under no obligation to issue any Occupancy Permit for the New Building or any part thereof, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 3.1(a).
- 3.2 Without limiting the general scope of ARTICLE 6, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit for the Building until there is compliance with the provisions of this ARTICLE 3.

ARTICLE 4 RECORD KEEPING

- 4.1 The Owner will keep accurate records pertaining to the use and occupancy of the Social Housing Units. Such records will be to the satisfaction of the City. At the request of the City, from time to time, the Owner will make such records available for inspection and copying by the City. The City will comply with the Owner's statutory obligations with respect to privacy of such information.

ARTICLE 5 ENFORCEMENT

- 5.1 This Agreement may be enforced by mandatory and prohibitory orders of the court. In any action to enforce this Agreement if the City is entitled to court costs, it shall be entitled to court costs on a solicitor and own client basis.

ARTICLE 6 RELEASE AND INDEMNITY

- 6.1 Release and Indemnity. Subject to Section 3.2, the Owner hereby:
- (a) releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner and covenants and agrees to indemnify and save harmless the City and all City Personnel from and against all Losses which may arise, accrue or be incurred by the City or any City Personnel or which are made by any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to:

- (i) by reason of the City or City Personnel:
 - A. withholding any permit pursuant to this Agreement; or
 - B. exercising any of its rights under any Section 219 covenant or other right granted to the City pursuant to this Agreement; or
- (ii) that otherwise arise out of, or would not have been incurred but for this Agreement;

whether or not such Losses are the result of, or relate in any way to any negligent acts or omissions on the part of the City or the City Personnel; and

- (b) covenants and agrees to indemnify and save harmless the City and City Personnel, from and against all Losses which may arise or accrue to any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to, by reason of:
 - (i) any negligent act or omission or wilful misconduct of the Owner or any of the Owner's Personnel in connection with the observance and performance of the obligations of the Owner under this Agreement; or
 - (ii) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement.

The indemnities in this ARTICLE 6 will be both personal covenants of the Owner (subject to Section 9.1) and integral parts of the Section 219 covenants granted in this Agreement.

6.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to Section 6.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 6.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 6.2(a) in the following circumstances:
 - (i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;
 - (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or
 - (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a

precedent with respect to other existing or potential claims affecting or involving the City;

provided however that if the City wishes to settle any claim, the City will not do so without the prior consent of the Owner, which consent will not be unreasonably withheld. In conducting any defence or making any settlement, the City will act in a manner reasonably consistent with the manner in which the City would act in connection with the defence or settlement of claims, suits, demands, actions or proceedings which would not be indemnified against under the provisions of this Section 6.2(b); and

- (c) Regardless of whether the claim is being defended under Section 6.2(a) or Section 6.2(b), the party having conduct of the proceedings will, upon written request of the other party, provide to the other party all information in its possession relating to the proceedings which may be properly disclosed at law. If the party not having conduct of the proceedings so requests in writing in a timely fashion, the party having conduct of the proceedings will join the other party as a third party to the proceedings.

- 6.3 Survival of Release and Indemnities. The release and indemnities in this Article 5 will remain effective, and survive any modification of, or partial release or release of the covenants created by this Agreement, and any termination of this Agreement, whether by fulfilment of the covenants contained in this Agreement or otherwise.

ARTICLE 7 SUBDIVISION OF THE LANDS

- 7.1 By Air Space Subdivision Plan. Notwithstanding Section 2.1(h):

- (a) subject to compliance by the Owner with all applicable requirements of the City's Approving Officer and the City's elected Council, this Agreement and all applicable laws and by-laws, the City will not unreasonably withhold its consent to a subdivision of the Lands and the New Building by the deposit of an air space subdivision plan, provided that all the Social Housing Units will thereafter be contained within a single air space parcel (the "Social Housing Parcel"); and
- (b) following such a subdivision and the issuance of a final occupancy permit for the Social Housing Parcel, the Owner may apply to the City for a partial discharge of this Agreement (the "Discharge") with respect to any parcel other than the Social Housing Parcel, and the City will on request of the Owner execute and deliver a registrable Discharge in respect of such other parcel(s) (whereupon this Agreement will cease to apply to any portion of the Lands other than the Social Housing Parcel) provided, that:
 - (i) the Director of Legal Services is satisfied that the Discharge will not unreasonably alter, restrict or limit the City's rights and the Owner's agreements and obligations in respect of the Social Housing Units, or in respect of the Social Housing Parcel, pursuant to this Agreement;

- (ii) the Discharge will be in form and substance acceptable to the Director of Legal Services and will be prepared by the Owner at its cost;
- (iii) the City will have a reasonable amount of time to execute and return the Discharge; and
- (iv) the preparation and registration of the Discharge will be without cost to the City.

**ARTICLE 8
NOTICES**

8.1 All notices, demands or requests of any kind which one party may be required or permitted to give to the other in connection with this Agreement, shall be in writing and shall be given by registered mail or personal delivery, addressed as follows:

(a) If to the City:

City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

Attention: City Clerk, with concurrent copies to the General Manager of Arts, Culture and Community Services and the Director of Legal Services

(b) If to the Owner:

Arbutus Village Holdings Ltd.
17th Floor - 900 West Georgia Street
Vancouver, British Columbia
V6C 2W6

Attention: President

and any such notice, demand or request will be deemed given:

(c) if made by registered mail, on the earlier of the day receipt is acknowledged by the addressee or the third day after it was mailed, except when there is a postal service disruption during such period, in which case delivery will be deemed to be completed upon actual delivery of the notice, demand or request; and

(d) if personally delivered, on the date when delivered,

or to such other address in Canada as either party may specify in writing to the other party in the manner described above, provided that if and when the owner of the Land or any part thereof should change, in the absence of any such specification, then to the address as set out in the State of Title Certificate for that particular parcel of land.

ARTICLE 9
MISCELLANEOUS

- 9.1 Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner shall be covenants the burden of which shall run with and shall bind the Lands and shall attach thereto and run with each and every part into which the same may be subdivided or consolidated. Upon the sale or transfer of the legal or beneficial interest in the Lands, the parties agree that the covenants and agreements herein contained shall only be binding upon the transferring party in respect of a breach or acts or omissions occurring during its ownership of the Lands, and the transferring party shall otherwise be released from all covenants and agreements herein contained following such sale or transfer of the legal or beneficial interest in the Lands.
- 9.2 Agreement to be a First Charge. The Owner agrees to cause the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:
- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
 - (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of the Development Permit; and
 - (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.
- 9.3 Severability. All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable; the balance of the obligations and covenants will remain and be binding.
- 9.4 Vancouver Charter. Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter*, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 9.5 Waiver. The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be

deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.

- 9.6 Further Assurances. The Owner will execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement including all acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter*.
- 9.7 Perfection of Intention. The Owner shall, after execution hereof, do or cause to be done at its own cost and expense all things and acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter* and also registered as a charge against title to the Lands with priority over all other encumbrances except those in favour of the City.
- 9.8 Owner's Representations and Warranties. The Owner represents and warrants to and covenants and agrees with the City that:
- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;
 - (b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in the title to the Lands;
 - (c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and
 - (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.
- 9.9 Enurement. This Agreement shall enure to the benefit of and be binding upon the City and its successors and assigns, and this Agreement shall enure to the benefit of and be binding upon the Owner and its successors and assigns.

IN WITNESS WHEREOF the parties have executed this Agreement on Form C or D which is a part hereof.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" mean the Mortgage registered under number CA5700843 and Assignments of Rents registered under numbers CA5700844;
- (b) "Existing Chargeholder" means the Bank of Nova Scotia;
- (c) "New Charges" means the registrable charges and encumbrances created by and contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the attached Terms of Instrument - Part 2.

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (i) consents to the Owner granting the New Charges to the City; and
- (ii) agrees with the City that the New Charges charge the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charges, and they had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

END OF DOCUMENT